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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of DAVE
COAPSTICK and SHARON
WELLMAN.

DAVE COAPSTICK,

Appellant,

v.

SHARON WELLMAN,

Respondent.

E063119

(Super.Ct.No. FAMVS1401524)

OPINION

APPEAL from the Superior Court of San Bernardino County. Alexander R.
Martinez, Judge. Affirmed.

Law Offices of Valerie Ross and Valerie Ross for Appellant.

No appearance for Respondent.

Appellant Dave Coapstick appeals from the trial court's order after hearing, filed
March 3, 2015, ordering him to pay spousal support to respondent Sharon Wellman in the

amount of \$2,707 a month.¹ Appellant argues the trial court erred when it included in his income \$101,326 in business expenditures he claimed for his trucking business. We affirm.

PROCEDURAL BACKGROUND

On May 23, 2014, appellant filed his petition for dissolution of his marriage to respondent.

On July 11, 2014, respondent filed her response.

On September 24, 2014, respondent filed her request for order, asking for attorney fees and costs, spousal support, and exclusive use of a 2006 automobile and the family residence. On that date, respondent also filed her income and expense declaration showing \$1,340 in monthly rental income and \$4,250 in living expenses. Respondent estimated appellant's gross monthly income before taxes at \$17,469, based on an attached profit and loss statement for the first quarter of 2013 from Dave Coapstick Trucking. In her supporting declaration, respondent stated she left work on disability leave on July 14, 2014, but had not yet received any disability payments.

On October 20, 2014, appellant filed his income and expense declaration and 2013 federal tax return. Appellant listed his living expenses, which appear to total \$4,750. Appellant also listed installment payments, which appear to total \$2,990, including

¹ The actual amount of spousal support ordered by the court after the hearing on February 5, 2015, is \$2,685. Counsel for respondent apparently prepared the order after hearing following the first hearing on December 1, 2014, at which the court initially set monthly spousal support at \$2,707. Respondent signed the order on January 7, 2015. Counsel for respondent did not prepare a revised order after the February 5, 2015 hearing, but rather had the court sign the order previously prepared.

\$1,500 for a big rig truck. In the section for him to list his income, he indicated “Varies.” The attached tax return showed net business income for the trucking business of \$13,536 for the entire year, after \$195,239 in gross receipts, minus \$40,511 for goods sold and \$141,192 for business expenses. The tax return also showed a \$13 depreciation loss from a racecar business, with no other expenses or income attributed to that business. On October 20, 2014, appellant filed his responsive declaration, consenting to the property order request but objecting to respondent’s requests for spousal support and attorney fees and costs.

The trial court held a hearing on the request for order on December 1, 2014 (the first hearing). At the conclusion of the hearing, the court ordered appellant to pay \$2,707 a month in spousal support from October 1, 2014 until December 1, 2018. The two months in arrearages from October and November 2014 were to be paid at the rate of \$500 a month. The payments were to cease if either party died or respondent remarried. The court explained that it came to this amount by examining appellant’s 2013 tax return. The court allowed the deductions for the cost of goods sold, which reduced appellant’s gross income to \$154,728. The court also allowed the typical business expenses listed in lines 8 through 25 from the IRS form 1040, schedule C, which totaled \$39,866. However, the court excluded the other expenses entered on line 27, in the amount of \$101,326 (the Line 27 Expenses), which included \$73,400 for fuel and \$21,760 for meals. The court based the spousal support payment on monthly gross income to appellant of \$9,571.

On January 2, 2015, appellant filed a request for order asking the trial court to remove the Line 27 Expenses from his computed income, arguing they were legitimate business expenses. The request for order was based on Code of Civil Procedure section 473, subdivision (d), which allows a trial court to “correct clerical mistakes.” On January 28, 2015, respondent filed her responsive declaration with supporting documents. The declaration and documents are discussed in more detail *post*.

The court held a hearing on the request for order on February 5, 2015 (the second hearing). The court made it clear that it had purposely included in appellant’s income the Line 27 Expenses, and that it was not a clerical error. “But as on the other primary argument that the Court inadvertently looked over \$100,000, it wasn’t inadvertent by this Court. This Court had the hearing before the parties. I chose not to consider and not to take into account all of the many of the things that were put into the tax return that I felt were not necessarily appropriate. And therefore, a motion to reconsider that would have been more appropriate to be filed, the timeline for the motion for reconsideration since December 1st. So I understand that this is being put on as a motion to clarify a clerical error. That portion was not a clerical error.” At the conclusion of the hearing, the court denied appellant’s request for order to exclude business expenses from his income, but corrected the spousal support to \$2,685 based on the reclassification of respondent’s rental income. The court also found that appellant had not yet paid any spousal support and declared arrearages for October through January of \$10,740, to be paid at the reduced rate of \$100 a month.

This appeal followed.

Respondent died on October 8, 2015. In appellant's opening brief filed October 13, 2015, counsel stated: "Appellant proceeds with this appeal of the spousal support order at issue herein because some arrearages have accrued between the date the trial court's order commenced October 1, 2014 and the date of respondent's death one year later."

On March 3, 2016, counsel for respondent filed a notice of intention not to file an opposition brief explaining: "Respondent is deceased and no one has come forward to act on behalf of her estate. Furthermore, the order appealed from is a temporary support order which terminated upon Ms. Wellman's death. The issue is now moot."

We decide this appeal in reliance on appellant's request that this court issue an opinion to resolve the matter of the arrearages. When, as in this case, a party fails to file a respondent's brief, we "may decide the appeal on the record, the opening brief, and any oral argument by the appellant." (Cal. Rules of Court, rule 8.220(a)(2).)

DISCUSSION

Appellant argues the Line 27 Expenses are required for the operation of his trucking business and thus the trial court abused its discretion when it included these expenses in its computation of his income available for spousal support.

"As a general rule, we review spousal support orders under the deferential abuse of discretion standard. [Citation.] We examine the challenged order for legal and factual support. 'As long as the court exercised its discretion along legal lines, its decision will be affirmed on appeal if there is substantial evidence to support it.' [Citations.] 'To the extent that a trial court's exercise of discretion is based on the facts of the case, it will be

upheld “as long as its determination is within the range of the evidence presented.”

[Citation.]” (*In re Marriage of Blazer* (2009) 176 Cal.App.4th 1438, 1443.) We review de novo questions of law that are based on undisputed facts. (*Ibid.*)

Family Code section 4058, subdivision (a)(2), which governs child support orders, includes in the definition of income: “Income from the proprietorship of a business, such as gross receipts from the business reduced by expenditures required for the operation of the business.” The issue for us to resolve here is whether appellant has established in this appeal that the trial court abused its discretion when it determined that the Line 27 Expenses are not required for the operation of appellant’s trucking business under Family Code section 4058, subdivision (a)(2).

Appellant submitted to the trial court his 2013 federal tax return as the entire body of evidence to substantiate his claim that he had \$13,523 in available income for the entire year from which to pay spousal support. The Line 27 Expenses that he challenges in this appeal are as follows: \$73,400 for fuel, \$21,760 for meals, \$3,630 for telephone, \$1,293 for drug program, \$792 for postage, \$438 for bank charges, and \$13 for miscellaneous. A court may consider evidence to rebut the presumption of correctness of recent tax returns. (*In re Marriage of Calcaterra & Badakhsh* (2005) 132 Cal.App.4th 28.) As described *post*, the court received considerable evidence from respondent which, if believed, support two conclusions. First, that appellant as a matter of common sense lived on an available income far higher than \$13,523 a year. Second, that appellant was less than truthful about his income, personal expenses, and legitimate business expenses.

Respondent presented to the court two pieces or categories of evidence to rebut the accuracy of the 2013 tax return as an accurate picture of appellant's net business income. First is a document purporting to be the profit and loss statement from the parties' trucking business for the first quarter of 2013. The document shows \$52,408 in income and \$19,418.07 in expenses for a profit of \$32,989.93 for the quarter. Supporting this document is respondent's declaration that the other three quarters of 2013 were similar and that, "[o]ur trucking business is profitable." The profit and loss statement is signed by appellant on May 14, 2013, with a signature that appears to us remarkably similar to the signature on the income and expense declaration he filed with the trial court. We do note that appellant's counsel represented at the second hearing that, "Mr. Coapstick did not sign it or it's not his signature. He didn't sign it. And it's not his printing. And it's dated six months or eight months before the period for which it's supposed to be. It's dated 5/4/12" However, the actual date on the statement is the expected "5-14-13," and the trial court was within its discretion to credit respondent's evidence and the representations of her counsel over those of appellant and his counsel.

Second, the record indicates appellant races cars numerous times each year, in various parts of the country, but reported neither expenses nor income for that endeavor. Appellant described his occupation on the 2013 tax return as "trucking/racing" and filed a schedule C profit or loss from business for his "automobile racing" business and claiming a \$13 loss for depreciation of business assets. In her responsive declaration, respondent depicted her husband as "self-employed and a race car driver. His hobby is very expensive" Respondent also attached to her declaration an internet printout showing

the “points” appellant earned from seven car races in 2014, along with an article from “National Dragster Weekly” showing appellant also owned a race car, has drag raced on a regular basis for over 20 years, and received racing sponsorships. At the first hearing, the trial court questioned appellant regarding his racing activities. Appellant’s counsel stated in response to the questioning that appellant has sponsors that pay all of the race fees, and appellant stated that he does not own a race car. The court showed its skepticism when it commented, “But he participates in these races across the country from Houston, Las Vegas. But spousal support is too costly? Is that the argument?”

In addition, the record contains evidence that, if believed by the trial court, shows numerous attempts by appellant to deceive the court about his income and expenses. First, respondent asserted in her declaration that the couple purchased a big rig truck in 2008 and paid it off in 2012. She also asserted, “[t]here was no big rig payment in 2013 and at least 10 months of 2014,” suggesting the purchase was made for the purpose of padding appellant’s expenses. Second, respondent stated that she heard from other people that the big rig purchase was actually a motor home that appellant purchased to stay in while at weekend races. Third, respondent disputed claimed expenses for \$40,000 for goods sold, which the court allowed, stating in her declaration that appellant does not sell goods as part of his long-haul trucking business. Fourth, respondent disputed the disallowed Line 27 Expense for \$21,760 for meals as “wildly high” because “[w]hen we were together, he brought food from home to eat on the road.” Fifth, respondent claimed that appellant told her he had purchased a new house with his new girlfriend. Sixth, respondent stated in her declaration that appellant is the pit crew chief for another race

car driver and questioned whether appellant would do this without compensation.

Finally, we note that appellant did not present any receipts or other evidence to show that these extensive expenditures, in particular \$73,400 for fuel and \$21,760 for meals, were necessary for the operation of his trucking business.

Against the evidence discussed *ante*, appellant here argues that, “[r]easonableness dictates that the operation of trucking business requires expenditures for fuel costs. To exclude such expenditures required for the operation of a trucking business appears arbitrary.” Appellant also cites extensively to *In re Marriage of Blazer, supra*, 176 Cal.App.4th 1438, for the proposition that a court should exclude from a spouse’s income those expenditures it finds are required for the operation of a business. In that case, the appellate court affirmed the trial court’s determination, based on expert testimony, that funds used to diversify a business to keep up with a changing business environment were required for the operation of the business. We note that the appellate court affirmed based on the testimony of an expert witness and emphasized that trial court decisions on such matters “that enjoys substantial evidentiary support” are not an abuse of discretion. (*Id.* at p. 1447.)

We recognize appellant’s argument that the trial court attributed no fuel expenses, at all, to the trucking business. Were these expenses the only ones at issue in the trial court, and were his truthfulness about reporting all sources of income also not at issue, we might agree and find no evidentiary support for the exclusion of all fuel expenses. In fact, the quarterly profit and loss statement offered into evidence by respondent shows a quarterly fuel expense of \$11,193.32. However, and this is key, we find that the overall

spousal order is within the range of evidence presented, as required by *Blazer*. “[I]n the face of an ambiguity as to whether disputed sums represent income available for support, that determination is committed to the court’s discretion.” (*Blazer, supra*, 176 Cal.App.4th at p. 1448.)

First, the trial court imputed to appellant a monthly income of \$9,571, which is even more favorable to appellant than the \$10,996 that is supported by the \$32,989 quarterly net profit shown on the profit and loss statement. Second, the trial court was reasonably skeptical about appellant’s truthfulness regarding his income and expenses, especially given the vast gulf between the \$195,239 his trucking business earned and the \$13,536 in yearly profit he reported to the Internal Revenue Service and to the court. Appellant’s income figures are even less believable because he reported monthly living expenses of \$4,750 and monthly debt payments of \$2,990. On paper, appellant ran a huge personal deficit. Yet, as the trial court stated, he could still afford to travel and race cars. Finally, respondent’s declaration, the evidence she presented, and representations by counsel at the first hearing all call into question appellant’s claim that he neither earned nor spent any money in conducting his car racing business/hobby. We defer to the trier of fact on issues of credibility. (*Escamilla v. Department of Corrections & Rehabilitation* (2006) 141 Cal.App.4th 498, 514-515.)

Based on the above evidence, which the court was entitled to believe or disbelieve in its reasonably exercised discretion, we cannot find that the court abused its discretion or acted counter to the law when it disallowed the Line 27 Expenses.

DISPOSITION

The spousal support order is affirmed.

Respondent is awarded her costs, if any, on appeal.

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CUNNISON*

J.

We concur:

RAMIREZ

P. J.

MILLER

J.

* Retired judge of the Riverside Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.